

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHANE MONROE BOWDEN,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

Case No. 1:19-cv-01769-JDP

SCREENING ORDER

ECF No. 10

FINDINGS AND RECOMMENDATIONS
THAT CASE BE DISMISSED FOR FAILURE
TO STATE A CLAIM

OBJECTIONS DUE IN THIRTY DAYS

ORDER DIRECTING CLERK OF COURT TO
ASSIGN CASE TO DISTRICT JUDGE

Plaintiff is a state prisoner proceeding without counsel in this civil rights action under 42 U.S.C. § 1983. On March 2, 2020, the court screened plaintiff's first amended complaint and found that he failed to state a claim. ECF No.16. Plaintiff filed a second amended complaint on March 18, 2020. ECF No. 17. Plaintiff's second amended complaint, like his first amended complaint, fails to state a claim.

Section 1983 allows a private citizen to sue for the deprivation of a right secured by federal law. *See* 42 U.S.C. § 1983; *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 916 (2017). To state a claim under 42 U.S.C. § 1983, a plaintiff must (1) allege the deprivation of a right secured by the U.S. Constitution and laws of the United States, and (2) show that the alleged deprivation

1 was committed by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48
 2 (1988). A person deprives another of a constitutional right, “within the meaning of § 1983, ‘if he
 3 does an affirmative act, participates in another’s affirmative act, or omits to perform an act which
 4 he is legally required to do that causes the deprivation of which complaint is made.’”
 5 *Preschooler II v. Clark Cty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting
 6 *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)).

7 In his second amended complaint, plaintiff again makes scant, conclusory allegations
 8 without factual support. *See* ECF No. 17. Plaintiff has not stated a claim against any defendant.
 9 He claims that his supervisor, Defendant Morales, “recklessly” dropped a drawer on her own foot
 10 and plaintiff’s leg. Plaintiff also claims that he should have an MRI of his leg, instead of the
 11 other treatment that he has received from doctors, including an x-ray and physical therapy.
 12 Plaintiff fails to provide facts supporting deliberate indifference against any defendant, including
 13 information about how the course of treatment he received was “medically unacceptable under
 14 the circumstances and [chosen] in conscious disregard of an excessive risk to plaintiff’s health.”
 15 *Snow v. McDaniel*, 681 F.3d 978, 987 (9th Cir. 2012), overruled in part on other grounds by
 16 *Peralta v. Dillard*, 744 F.3d 1076, 1082-83 (9th Cir. 2014). Plaintiff has previously been given
 17 leave to amend and detailed instructions on the legal standard. ECF No. 16. Plaintiff’s
 18 allegations still do not state a claim under § 1983. Thus, further leave to amend would be futile.

19 **Order**

20 The clerk of court is directed to assign this case to a district judge, who will preside over
 21 this case. I will remain as the magistrate judge assigned to the case.

22 **Recommendations**

23 I recommend that the case be dismissed for plaintiff’s failure to state a claim. I submit
 24 these findings and recommendations to the U.S. district judge presiding over the case under 28
 25 U.S.C. § 636(b)(1)(B) and Local Rule 304. Within thirty days of the service of the findings and
 26 recommendations, the parties may file written objections to the findings and recommendations
 27 with the court and serve a copy on all parties. The document containing the objections must be
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captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The presiding district judge will then review the findings and recommendations under 28 U.S.C. § 636(b)(1)(C).

IT IS SO ORDERED.

Dated: September 4, 2020


UNITED STATES MAGISTRATE JUDGE

No. 204.